



March 16, 1999

Mr. Lou Bright  
General Counsel  
Texas Alcoholic Beverage Commission  
P.O. Box 13127  
Austin, Texas 78711-3127

OR99-0740

Dear Mr. Bright:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 122875.

The Texas Alcoholic Beverage Commission (the “commission”) received a request for information relating to an automobile accident on Ranch Road 620 in Austin, Texas. You have released most of the information at issue to the requestor. You state that you are relying on Open Records Decision No. 127 (1976) to withhold the remaining information from disclosure. You also contend that portions of the remaining information are excepted from disclosure under section 552.130 of the Government Code and under section 552.101 of the Government Code in conjunction with the informer’s privilege and federal law. We have considered the exceptions you claim and have reviewed the documents at issue.

Open Records Decision No. 127 (1976) applied the statutory predecessor to section 552.108 of the Government Code to police blotters, show-up sheets, arrest sheets, offense reports, and personal history and arrest records. You state that you are relying on this open records decision to withhold information about witnesses from disclosure, but you have not specifically argued that section 552.108 is applicable to the information at issue. A governmental body seeking to withhold information has the burden of stating which exceptions apply to the information and giving reasons why the stated exceptions apply. *See* Gov’t Code § 552.301. Because you have not provided us with arguments as to why section 552.108 should apply to the particular information at issue here, we conclude that the information is not excepted from disclosure under section 552.108.

You contend that portions of the information at issue are excepted from disclosure under section 552.101 in conjunction with the informer's privilege. Section 552.101 of the Government Code excepts from disclosure "information considered to confidential by law, either constitutional, statutory, or by judicial decision." The informer's privilege, incorporated into the Open Records Act by section 552.101, has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). You contend that the informer's privilege protects the identities of witnesses interviewed by the commission. In this case, the witnesses do not appear to be informants. Thus, you may not withhold the names of the witnesses or any identifying information under the informer's privilege.

You state that you are withholding the social security numbers contained in the submitted documents from disclosure pursuant to section 405, title 42 of the United States Code. We note that a social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994).

Finally, you contend that the driver's license numbers contained in the submitted documents are excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

We agree that you must withhold the driver's license numbers from disclosure pursuant to section 552.130.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script, reading "Karen Hattaway".

Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref:: ID# 122875

Enclosures: Submitted documents

cc: Ms. Vicki McElroy  
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Corpus Christi, Texas 78478-0801  
(w/o enclosures)